

Notice of Allowability

Application No.

10/519,379

Examiner

AARON J. KOSAR

Applicant(s)

TSUBAKI ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Telephonic Interview of 7/22/2008.
2. ☒ The allowed claim(s) is/are 15,16,20 and 22.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 8/11/2008;11/26/2007;12/27/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 7/22/2008.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/Cecilia Tsang/
Supervisory Patent Examiner
Art Unit 1654

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Madsen on July 22, 2008.

The application has been amended as follows:

The claims have been amended as follows:

Claims 1-14, 17-19, 21 and 23 have been canceled.

15. A biologically pure strain of *Aureobasidium pullulans* isolated from a food source, the strain having a gene selected from an 18S rRNA gene containing SEQ ID No.1 and an ITS-5.8S rRNA gene containing SEQ ID No. 2, wherein the strain is capable of producing and secreting β -glucan, and wherein the strain is *Aureobasidium pullulans* ADK-34 (FERM BP-8391).

16. The isolated strain of *Aureobasidium pullulans* according to claim 15, wherein the strain has resistance to the antibiotic cycloheximide.

20. A process of producing β -glucan, the process comprising culturing an isolated strain of *Aureobasidium pullulans* ADK-34 (FERM BP-8391) according to claim 15, wherein said strain produces and secretes β -glucan from said culturing.

22. The process according to claim 20, wherein the culturing of the *Aureobasidium pullulans* comprises culturing in a medium containing saccharides as a carbon source.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: Whereas the prior art of record provides for fungi having ability to produce β -glucan with pullulan, the instantly claimed organism is drawn to a fungal strain (herein referred to as "ADK-34") not anticipated or made obvious over the prior art. The instantly claimed organism is not anticipated or made

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obvious over the art of record, because the claimed organism functions to react with sucrose to produce a β -glucan-containing and pullulanase-resistant (i.e. essentially pullulan-free) product. The claimed organism also has antibiotic resistance to cycloheximide. In contrast, the organisms of the prior art provide for production of pullulan-rich products and/or antibiotic-sensitivity.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. KOSAR whose telephone number is (571)270-3054. The examiner can normally be reached on Monday-Thursday, 7:30AM-5:00PM, ALT. Friday,EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron J Kosar/
Examiner, Art Unit 1651

/Cecilia Tsang/
Supervisory Patent Examiner, Art Unit 1654